

HOUSE BILL No. 1035

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-4-1-18; IC 7.1-1-3-47.5; IC 7.1-3-19-17; IC 24-4.5-7; IC 35-52-5-9.5.

Synopsis: Substantive problems. Resolves substantive problems in the Indiana Code. Resolves various nontechnical conflicts and problems not suitable for resolution in the annual technical corrections bill, including: (1) a statute that has been both added and repealed; (2) ambiguous language; (3) incorrect references; and (4) results that must not have been intended. (The introduced version of this bill was prepared by the code revision commission.)

Effective: Upon passage; July 1, 2015 (retroactive).

Washburne, Kersey

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1035

A BILL FOR AN ACT to amend the Indiana Code concerning general provisions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-4-1-18, AS AMENDED BY P.L.230-2015,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 18. (a) Except as provided in subsection (b),
- 4 the following individuals shall file and maintain in place an individual
- 5 surety bond during each year that the individual serves as an officer,
- 6 employee, or contractor:
- 7 (1) City judges, controllers, clerks, and clerk-treasurers.
- 8 (2) Town judges and clerk-treasurers.
- 9 (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners,
- 10 assessors, and clerks.
- 11 (4) Township trustees.
- 12 (5) Those employees directed to file an individual bond by the
- 13 fiscal body of a city, town, or county.
- 14 (6) Township assessors (if any).
- 15 (7) Individuals:
- 16 (A) who are employees or contractors of a city, town, county,
- 17 or township; and



(B) whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to funds that belong to the federal government, the state, a political subdivision, or another governmental entity.

(b) The fiscal body of a city, town, county, or township may by ordinance authorize the purchase of a blanket bond that:

(1) is endorsed to include faithful performance to cover the faithful performance of; and

(2) includes aggregate coverage sufficient to provide coverage amounts specified for;

all employees, commission members, and persons acting on behalf of the local government unit, including the officers, employees, and contractors described in subsection (a) who are required to file a bond under this chapter.

(c) The fiscal body of a city, town, county, or township may by ordinance (or for a township, by resolution) authorize the purchase of a crime insurance policy that provides coverage for criminal acts or omissions committed by officers, employees, contractors, commission members, and persons acting on behalf of the local government unit. For the sole purpose of recovering public funds on behalf of a local government unit, the state is considered to be an additional named insured on all crime insurance policies obtained under this subsection.

(d) Except as provided in subsections (j) and (k), the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

(1) The amount must equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount for the officer or employee.

County auditors shall file bonds in amounts of not less than thirty thousand dollars (\$30,000), as fixed by the fiscal body of the county.

(e) The amount of the bond of a person who is not specified in subsection (d) and is required to file an individual bond shall be fixed by the fiscal body of the unit as follows:

(1) If the person is not described in subsection (a)(7), at not less than fifteen thousand dollars (\$15,000).



(2) If the person is described in subsection (a)(7), at not less than five thousand dollars (\$5,000).

(f) Except as provided in subsection (l), a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least thirty thousand dollars (\$30,000).

(g) Except as provided under subsection (f), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(h) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(i) The commissioner of insurance shall prescribe the form of the bonds or crime insurance policies required by this section, in consultation with the state board of accounts and the Indiana archives and records administration under IC 5-15-5.1-6. A bond or crime insurance policy that does not conform to the form prescribed under this subsection may not be used to meet the requirements of this chapter.

(j) Notwithstanding subsection (d), the state board of accounts may fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township trustee, or conservancy district financial clerk at an amount that exceeds thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(k) Notwithstanding subsection (e), the state board of accounts may fix the amount of the bond for any person who is described in:

(1) subsection (e)(1) and is required to file an individual bond at an amount that exceeds fifteen thousand dollars (\$15,000); or



(2) subsection (e)(2) and is required to file an individual bond at an amount that exceeds five thousand dollars (\$5,000).

An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(l) Notwithstanding subsection (f), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) at an amount that exceeds thirty thousand dollars (\$30,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(m) Both of the following apply to a bond that is filed to comply with this section:

(1) Each bond must have a term of one (1) year commencing on the first day of the:

(A) calendar year;

(B) fiscal year of the political subdivision or governmental unit; or

(C) individual's service in the office, ~~or~~ employment, **or contracted** position for which a bond is required.

(2) Consecutive yearly bonds filed by an individual must provide separate coverage for each year. The aggregate liability of the surety or insurer for a policy year is the sum of the amounts specified in the bonds issued by the surety or insurer for that policy year.

SECTION 2. IC 7.1-1-3-47.5, AS AMENDED BY P.L.176-2015, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 47.5. (a) "Tobacco product", except as provided in subsection (b), has the meaning set forth in IC 7.1-6-1-3.

(b) "Tobacco product", for purposes of IC 7.1-3-18.5, means a product that:

(1) contains tobacco, including e-liquid (as defined by IC 7.1-7-2-10) that contains ~~tobacco~~, **nicotine**; and

(2) is intended for human consumption.

SECTION 3. IC 7.1-3-19-17, AS ADDED BY P.L.121-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) This section applies to a permit issued



under IC 7.1-3-20-16(d), IC 7.1-3-20-16(g), IC 7.1-3-20-16(k), or IC 7.1-3-20-16(l) if a ~~local unit~~ **municipal legislative body** has adopted an ordinance requiring a formal written commitment as a condition of eligibility for a permit, as described in subsection (b).

(b) As a condition of eligibility for a permit, the applicant must enter into a formal written commitment with the municipal legislative body regarding the character or type of business that will be conducted on the permit premises. The municipal legislative body must adopt an ordinance approving the formal written commitment. A formal written commitment is binding on the permit holder and on any lessee or proprietor of the permit premises. When an application for renewal of a permit is filed, the applicant shall forward a copy of the application to the municipal legislative body. The municipal legislative body shall receive notice of any filings, hearings, or other proceedings on the application for renewal from the applicant.

(c) A formal written commitment may be modified by the municipal legislative body with the agreement of the permit holder.

(d) Except as provided in subsection (f), the amount of time that a formal written commitment is valid may not be limited or restricted.

(e) A formal written commitment is terminated at the time a permit is ~~lost~~, revoked or not renewed.

(f) If the character or type of business violates the formal written commitments, the municipality may adopt a recommendation to the local board and the commission to:

- (1) deny the permit holder's application to renew the permit; or
- (2) revoke the permit holder's permit.

(g) The commission shall consider evidence at the hearing on the issue of whether the business violated the formal written commitments. If the commission determines there is sufficient evidence that the commitments have been violated by the permittee, the commission may:

- (1) deny the application to renew the permit; or
- (2) revoke the permit;

as applicable.

SECTION 4. IC 24-4.5-7-202, AS AMENDED BY P.L.90-2008, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 202. (1) Notwithstanding any other law, the only fee that may be contracted for and received by the lender or an assignee on a small loan is a charge, not to exceed twenty-five dollars (\$25), for each:

- (a) return by a bank or other depository institution of a **dishonored:**



- (i) ~~dishonored~~ check;
 - (ii) negotiable order of withdrawal; or
 - (iii) share draft;
- issued by the borrower; or
- (b) time an authorization to debit the borrower's account is dishonored.

This additional charge may be assessed one (1) time regardless of how many times a check or an authorization to debit the borrower's account may be submitted by the lender and dishonored.

(2) A lender may:

- (a) present a borrower's check for payment; or
- (b) exercise a borrower's authorization to debit the borrower's account;

not more than three (3) times.

SECTION 5. IC 24-4.5-7-406, AS AMENDED BY P.L.90-2008, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 406. (1) An agreement with respect to a small loan may not provide for charges as a result of default by the borrower other than those specifically authorized by this chapter. A provision in a small loan agreement in violation of this section is unenforceable.

(2) A lender or an assignee of a small loan may seek only the following remedies upon default by a borrower:

(a) Recovery of:

- (i) the contracted principal amount of the loan; and
- (ii) the loan finance charge.

(b) **If contracted for under section 202 of this chapter,** collection of a fee for:

- (i) a returned check, negotiable order of withdrawal, or share draft; or
- (ii) a dishonored authorization to debit the borrower's account;

if contracted for under section 202 of this chapter: because of insufficient funds in the borrower's account.

(c) Collection of postjudgment interest, if awarded by a court.

(d) Collection of court costs, if awarded by a court.

(3) A lender or an assignee of a small loan may not seek any of the following damages or remedies upon default by a borrower:

- (a) Payment of the lender's attorney's fees.
- (b) Treble damages.
- (c) Prejudgment interest.
- (d) Damages allowed for dishonored checks under any statute other than this chapter.
- (e) Any damages or remedies not set forth in subsection (2).



1 (4) A contractual agreement in a small loan transaction must include
2 a notice of the following in 14 point bold type:

3 (a) The remedies available to a lender or an assignee under
4 subsection (2).

5 (b) The remedies and damages that a lender or an assignee is
6 prohibited from seeking in a small loan transaction under
7 subsection (3).

8 SECTION 6. IC 35-52-5-9.5, AS ADDED BY P.L.252-2015,
9 SECTION 41, IS REPEALED [EFFECTIVE JULY 1, 2015
10 (RETROACTIVE)]. ~~Sec. 9-5. IC 5-16-13-14 defines a crime~~
11 ~~concerning quarterly wage reports.~~

12 SECTION 7. [EFFECTIVE JULY 1, 2015 (RETROACTIVE)] **The**
13 **general assembly recognizes that IC 11-12-2-1(b) was set to expire**
14 **June 30, 2015, and that HEA 1006-2015, SECTION 1**
15 **(P.L.179-2015), and SEA 464-2015, SECTION 5 (P.L. 209-2015),**
16 **amended IC 11-12-2-1(b) effective July 1, 2015. The general**
17 **assembly intends to have IC 11-12-2-1(b) in effect on and after July**
18 **1, 2015, until that provision is otherwise amended or repealed or**
19 **expires.**

20 SECTION 8. **An emergency is declared for this act.**

